

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

APPLETON PAPERS INC.
AND NCR CORPORATION,

Plaintiffs,

vs.

Case No. 08-CV-00016-WCG

GEORGE A. WHITING PAPER
COMPANY, et al.,

Defendants.

**DEFENDANT CITY OF APPLETON'S ANSWER TO
FIFTH AMENDED COMPLAINT AND COUNTERCLAIM**

Comes now the defendant City of Appleton, by its attorneys Anderson & Kent, S.C., and for its Answer to the Plaintiffs' Fifth Amended Complaint and the City of Appleton's Counterclaim, hereby alleges and shows to the Court as follows:

INTRODUCTION

1. Answering ¶1, admits the allegations contained therein.
2. Answering ¶2, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.
3. Answering ¶3, the City of Appleton denies any liability to Plaintiffs and for any share of the demanded cleanup costs and damages; lacks knowledge or information sufficient to form a belief as to the balance of the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.
4. Answering ¶4, the City of Appleton denies any liability to Plaintiffs and for any

share of the demanded cleanup costs and damages; no response is necessary regarding the relief which the Plaintiffs' Fifth Amended Complaint seeks as that pleading speaks for itself; lacks knowledge or information sufficient to form a belief as to the balance of the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

5. Answering ¶5, admits the allegation contained therein.

6. Answering ¶6, admits that the City of Appleton conducted business as a municipal corporation within this district at times relevant to the events described in the Fifth Amended Complaint; lacks knowledge or information sufficient to form a belief as to the balance of the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

PARTIES

7. Answering ¶7, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

8. Answering ¶8, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

9. Answering ¶9, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

10. Answering ¶10, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

11. Answering ¶11, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

12. Answering ¶12, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

13. Answering ¶13, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

14. Answering ¶14, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

15. Answering ¶15, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

16. Answering ¶16, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

17. Answering ¶17, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

18. Answering ¶18, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

thereof.

19. Answering ¶19, admits the allegation contained therein.

20. Answering ¶20, admits the allegation contained therein.

21. Answering ¶21, admits the allegation contained therein.

22. Answering ¶22, admits the allegation contained therein.

23. Answering ¶23, admits the allegation contained therein.

24. Answering ¶24, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

25. Answering ¶25, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

26. Answering ¶26, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

27. Answering ¶27, admits the allegation contained therein.

28. Answering ¶28, admits the allegation contained therein.

29. Answering ¶29, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

30. Answering ¶30, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

GENERAL ALLEGATIONS

31. Answering ¶31, admits the allegations regarding the general nature of the case; lacks knowledge or information sufficient to form a belief as to the balance of the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

32. Answering ¶32, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

33. Answering ¶33, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

34. Answering ¶34, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

35. Answering ¶35, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

36. Answering ¶36, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

37. Answering ¶37, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

38. Answering ¶38, lacks knowledge or information sufficient to form a belief as to

the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

39. Answering ¶39, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

40. Answering ¶40, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

41. Answering ¶41, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

42. Answering ¶42, admits that the City of Appleton owned and operated the Appleton POTW; lacks knowledge or information sufficient to form a belief as to the balance of the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

43. Answering ¶43, lacks knowledge or information sufficient to form a belief as to the balance of the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

44. Answering ¶44, lacks knowledge or information sufficient to form a belief as to the balance of the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

45. Answering ¶45, lacks knowledge or information sufficient to form a belief as to the balance of the allegations contained therein and therefore denies the same, putting the

Plaintiffs to their proof thereof.

46. Answering ¶46, lacks knowledge or information sufficient to form a belief as to the balance of the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

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the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

Cleanup Work and Natural Resources Damages at the Lower Fox River Site

54. Answering ¶54, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

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66. Answering ¶66, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

COUNT I – CLAIM UNDER CERCLA §107

67. Answering ¶67, realleges and incorporates by reference all of its prior responses.

68. Answering ¶68, the allegation states legal conclusions which speak for themselves and for which no response is necessary; to the extent a response is necessary vis-à-vis the City of

Appleton, the City of Appleton denies any liability for response costs under the referenced sections and that the Plaintiffs are entitled to any of the relief they demand.

69. Answering ¶69, the allegation states legal conclusions which speak for themselves and for which no response is necessary; to the extent a response is necessary vis-à-vis the City of Appleton, the City of Appleton denies any liability for response costs under the referenced sections and that the Plaintiffs are entitled to any of the relief they demand.

70. Answering ¶70, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

71. Answering ¶71, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

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80. Answering ¶80, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

81. Answering ¶81, admits the allegation contained therein but denies that the City of Appleton is liable to Plaintiffs for any of the relief they seek.

82. Answering ¶82, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

83. Answering ¶83, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

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90. Answering ¶90, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

91. Answering ¶9,1 the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

92. Answering ¶92, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

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101. Answering ¶101, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

102. Answering ¶102, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

103. Answering ¶103, admits the allegation contained therein but denies that the City of Appleton is liable to Plaintiffs for any of the relief they seek.

104. Answering ¶104, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

105. Answering ¶105, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

106. Answering ¶106, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

107. Answering ¶107, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

108. Answering ¶108, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

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110. Answering ¶110, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

111. Answering ¶111, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

112. Answering ¶112, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

113. Answering ¶113, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

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116. Answering ¶116, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

117. Answering ¶117, the allegation states a legal conclusion for which no response is necessary; to the extent a response is necessary, admits the allegation contained therein.

118. Answering ¶118, the allegations ultimately state a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

119. Answering ¶119, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

120. Answering ¶120, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

121. Answering ¶121, the allegations ultimately state a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same,

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122. Answering ¶122, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

123. Answering ¶123, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

124. Answering ¶124, the allegations ultimately state a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

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126. Answering ¶126, the allegations ultimately state a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

127. Answering ¶127, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information

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128. Answering ¶128, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

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133. Answering ¶133, the allegation ultimately states a legal conclusion for which no

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134. Answering ¶134, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

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139. Answering ¶139, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

140. Answering ¶140, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

141. Answering ¶141, the allegations ultimately state a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

142. Answering ¶142, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

143. Answering ¶143, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

144. Answering ¶144, the allegations ultimately state a legal conclusion for which no response is necessary; to the extent a response is necessary, denies the allegations contained therein.

145. Answering ¶145, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, denies the allegation contained therein.

146. Answering ¶146, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, denies the allegations contained therein.

147. Answering ¶147, the allegations ultimately state a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

148. Answering ¶148, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

149. Answering ¶149, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

150. Answering ¶150, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

151. Answering ¶151, the allegation ultimately states a legal conclusion for which no

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152. Answering ¶152, the allegations ultimately state a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

153. Answering ¶153, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

154. Answering ¶154, the allegations ultimately state a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

155. Answering ¶155, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

156. Answering ¶156, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

157. Answering ¶157, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

158. Answering ¶158, the allegations ultimately state a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

159. Answering ¶159, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

160. Answering ¶160, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

161. Answering ¶161, the allegations ultimately state a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

162. Answering ¶162, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same,

putting the Plaintiffs to their proof thereof.

163. Answering ¶163, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

164. Answering ¶164, the allegations ultimately state a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

165. Answering ¶165, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

166. Answering ¶166, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

167. Answering ¶167, the allegations ultimately state a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

168. Answering ¶168, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information

sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

169. Answering ¶169, the allegations ultimately state a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

170. Answering ¶170, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

171. Answering ¶171, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

172. Answering ¶172, the allegations ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

173. Answering ¶173, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

174. Answering ¶174, the allegations ultimately states a legal conclusion for which no

response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

175. Answering ¶175, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

176. Answering ¶176, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

177. Answering ¶177, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

178. Answering ¶178, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

179. Answering ¶179, the allegation ultimately states a legal conclusion for which no response is necessary; to the extent a response is necessary, lacks knowledge or information sufficient to form a belief as to all of the allegations contained and referenced therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

180. Answering ¶180, denies the allegation contained therein.

181. Answering ¶181, denies the allegation contained therein, including any allegation that the City of Appleton is liable for any of the referenced costs.

182. Answering ¶182, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

183. Answering ¶183, denies the allegation contained therein.

COUNT II –CLAIM UNDER CERCLA § 113

184. Answering ¶184, realleges and incorporates by reference all of its prior responses.

185. Answering ¶185, the allegation states legal conclusions which speak for themselves and for which no response is necessary; to the extent a response is necessary vis-à-vis the City of Appleton, the City of Appleton denies any liability for contribution under the referenced section and that the Plaintiffs are entitled to any of the relief they demand.

186. Answering ¶186, denies any liability for any of the referenced costs upon any theory of liability or allocation of damages; lacks knowledge or information sufficient to form a belief as to the balance of the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

187. Answering ¶187, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

188. Answering ¶187, Answering ¶185, the allegation states legal conclusions which speak for themselves and for which no response is necessary; to the extent a response is necessary vis-à-vis the City of Appleton, the City of Appleton denies any liability for

contribution under the referenced section and that the Plaintiffs are entitled to any of the relief they demand.

COUNT III—CLAIM FOR DECLARATORY RELIEF

189. Answering ¶189, realleges and incorporates by reference all of its prior responses.

190. Answering ¶190, lacks knowledge or information sufficient to form a belief as to the allegation contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

191. Answering ¶191, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

192. Answering ¶192, lacks knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same, putting the Plaintiffs to their proof thereof.

193. Answering ¶193, the City of Appleton denies any liability to Plaintiffs and for any share of the referenced Costs and damages; no response is necessary regarding the relief which the Plaintiffs' Fifth Amended Complaint seeks as that pleading speaks for itself.

AFFIRMATIVE DEFENSES

194. Plaintiffs' Fifth Amended Complaint fails to state a claim upon which relief can be granted.

195. Plaintiffs' claims may be barred, in whole or in part, due to Plaintiffs' failure to fully and timely comply with Wisconsin's Municipal Notice-of-Claim statute, Wis. Stat. § 893.80.

196. Plaintiffs' claims may be barred, in whole or in part, by their failure to fully and

timely comply with the requirements of the National Contingency Plan, 40 C.F.R. 300, *et seq.* and all other controlling statute or law which must be satisfied as a precondition to commencing any action of the type the Plaintiffs have brought here.

197. Plaintiffs' claims may be barred, in whole or in part, by the applicable statute of limitations.

198. Plaintiffs' claims may be barred, in whole or in part, by the doctrines of waiver, estoppel, and/or laches.

199. Plaintiffs' claims may be barred, in whole or in part, by their failure to first fully and timely exhaust all administrative remedies available to them.

200. Plaintiffs' claims may be barred, in whole or in part, because Plaintiffs' claims are not ripe for adjudication and/or Plaintiffs lack standing to assert them and are not a real party in interest.

201. Plaintiffs' claims may be barred, in whole or in part, because their alleged damages are the product of their own negligence or the fault of others over whom the City of Appleton has no control or derivative liability.

202. Plaintiffs' claims may be barred, in whole or in part, because any contribution of PCB's to the Fox River which could be reasonably attributed to the City of Appleton is *de minimis* and of such nominal amount that it would be inequitable for the City to have any share of Plaintiffs' alleged costs or damages.

203. Plaintiffs' claims may be barred, in whole or in part, because the City of Appleton is exempt from liability as a *de micromis* party under the Small Business Liability Relief and Brownfields Revitalization Act and § 107(o) of CERCLA , 42 U.S.C. § 9607(o).

204. Plaintiffs' claims may be barred, in whole or in part, because any contribution of

PCB's to the Fox River which in any way involved the City of Appleton was first and originally sent to the Appleton POTW entirely from Plaintiffs or other third parties over whom the City of Appleton has no control; the Appleton POTW exercised due care with respect to the hazardous substance concerned; and the Appleton POTW took precautions against foreseeable actions and omissions of the third parties and the consequences that could foreseeably result from such acts and omissions.

205. Plaintiffs' claims may be barred in whole or in part because the City of Appleton holds a discharge permit for its POTW, issued pursuant to the National Pollutant Discharge Elimination System (NPDES), and is regulated under the Federal Clean Water Act (33 U.S.C. §§ 401 et seq.).

206. Plaintiffs' claims may be barred, in whole or in part, by the doctrine of unclean hands.

207. Plaintiffs' claims may be barred, in whole or in part, by their failure to mitigate their damages.

208. To the extent Plaintiffs' claims sound in tort, those claims may be barred or reduced, in whole or in part, due to the operation of Wisconsin's Municipal damage cap, Wis. Stat. 893.80.

209. The City of Appleton reserves the right to adopt any and all defenses, including affirmative defenses, asserted by any party, as well as the right to add to or amend its affirmative defenses as discovery continues and as the Court otherwise permits.

COUNTERCLAIM

As and for its Counterclaim against the Plaintiffs in this matter, the City of Appleton further alleges and shows to the Court as follows:

210. The City of Appleton is a municipal corporation organized under the laws of the State of Wisconsin.

211. Should there be any finding that any PCB's were released into the Fox River by the City of Appleton, including through the Appleton POTW, all such PCB's were first and originally sent to the City of Appleton and the Appleton POTW by Plaintiffs or other third parties over whom the City of Appleton has no control.

212. If the City of Appleton is deemed to be responsible for any of the cleanup Costs and damages demanded by the Plaintiffs, then the City of Appleton is entitled to contribution and/or indemnification from the Plaintiffs for such damages as allowed by law.

WHEREFORE, the defendant City of Appleton demands judgment as follows:

- A. For dismissal of all of the claims against them in this matter with prejudice;
- B. In the alternative, and to the extent the City of Appleton is found to be liable upon any of the claims asserted against it in this matter, for a judgment of contribution and/or indemnification against the Plaintiffs according to law;
- B. For the City of Appleton's statutory costs and attorneys' fees; and
- C. For all other relief the Court deems just and equitable.

DATED this 1st day of July, 2008.

By: /s/ Paul G. Kent

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